Supreme Court, U.S.
FILED

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No. _____

In The
Supreme Court of the United States

YILING ZHANG,

Petitioner,

V.

INLAND REGIONAL CENTER,

Respondent.

On Petition for a Writ of Certiorari
To the California Court of Appeal
4th Appellate District Div.2

APPENDIX

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IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT DIVISION TWO

[FILED AUGUST 31, 2010]

M.Z., a minor, etc., et al., Plaintiffs and Appellants, v. INLAND COUNTIES REGIONAL CENTER, INC., Defendant and Respondent.	E049230 (Super. Ct. No. RIC472696) OPINION

APPEAL from the Superior Court of Riverside County. Gloria Trask, Judge. Affirmed in part; dismissed in part.

Yiling Zhang, in pro. per., for Plaintiff and Appellant.

Brunick, McElhaney & Beckett and Steven K. Beckett for Defendant and Respondent.

I

INTRODUCTION

M.Z., a child with developmental disabilities, is entitled to receive services from the Inland Regional

Center (IRC) under the Lanterman Developmental Disabilities Services Act. (Welf. & Inst. Code, § 4500 et seq.) On its face, the appeal concerns suspension of services to M.Z. caused by a dispute between Y.Z., who is M.Z.'s mother, and the IRC. At the end of the day, however, the case is finally about Y.Z. claiming reimbursement for less than $500 for the cost of diapers and an autism assessment.

Y.Z. is not a licensed attorney. Y.Z. may represent herself in propria persona. But, as the authorized representative for M.Z.,[1] Y.Z. still needs an attorney to assert claims on behalf of M.Z. Accordingly, we dismiss the portion of the appeal, filed by Y.Z. purportedly acting on behalf of M.Z., concerning the judgment denying the petition for writ of administrative mandamus. We affirm the judgment denying Y.Z.'s independent breach of contract claim.

II

FACTUAL AND PROCEDURAL BACKGROUND

The difficulties between Y.Z. and the IRC began in 2005 when Y.Z. continuously refused to sign form 35C, the annual notification and agreement form, acknowledging agreement with M.Z.'s Individual Program Plan (IPP) (Welf. & Inst. Code, § 4646,subd. (g).) Y.Z. expressed ongoing dissatisfaction with issues about diaper service;[2] quarterly reviews; and autism assessment and in-home treatment. Because of various disagreements between Y.Z. and the IRC, M.Z.'s services were suspended in January 2007.

Y.Z. requested an administrative hearing, which was conducted in February 2007. The administrative

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[1] Welfare and Institutions Code section 4701.6

[2] M.Z. is incontinent.

law judge (ALJ) issued his decision on March 1, 2007. He found that the IRC had terminated M.Z.'s services because Y.Z. had refused without justification to sign form 35C. (Welf. & Inst. Code, § 4646, subd. (g).) The ALJ ordered the proposed IPPs, as drafted by Y.Z. and the agency, to be combined as a single IPP, including any attached written objections by Y.Z. If Y.Z. signed the combined IPP within 30 days, M.Z.'s services would be reinstated. The ALJ also ordered Y.Z. to cooperate with IRC's quarterly reviews.[3] Finally, the ALJ denied Y.Z.'s claims for reimbursement for the cost of services.

On May 30, 2007, Y.Z., acting in propria persona for herself and purportedly on behalf of M.Z., filed a combined petition for writ of administrative mandamus (Code Civ. Proc., § 1094.5) and complaint for breach of contract against defendants. The petition alleged that defendants had violated state law by coercing Y.Z. to sign the IPP and denying M.Z. services, including autism treatment costing $990. The claim for breach of contract alleged that IRC had not reimbursed Y.Z. $499.87 for diaper costs and for the cost of the initial autism assessment and had failed to provide autism treatment to M.Z. from January through March 2007. The combined writ petition and complaint included a claim for punitive damages.

During part of the proceedings, between March 2008 and March 2009, M.Z. was represented by court-appointed minor's counsel, Gilbert M. Gutierrez (Gutierrez).

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[3] The parties have complied with the first three aspects of the ALJ's decision

In May 2008, the court granted IRC's motion to strike the punitive damages claim. The court explained to Y.Z. that she could not legally represent her daughter because she was not a licensed attorney.

In March 2009, the court announced its intention to deny the writ petition and explained again to Y.Z. that, as a nonattorney parent, she could not represent M.Z. in court. Gutierrez, M.Z.'s court-appointed counsel, told the court that he had reviewed the administrative proceedings and determined the administrative decision was proper and Y.Z.'s objections lacked merit. The court denied the writ petition, set a date for the trial of Y.Z.'s breach of contract claims, and relieved Gutierrez as attorney of record for M.Z.

Subsequently, in May 2009, the court conducted a trial on the breach of contract claim. Y.Z. submitted receipts in the amount of $49.87 for the purchase of diapers but admitted she would not sign the necessary reimbursement form, the vendor application. The remaining issue involved whether Y.Z. could obtain reimbursement from IRC of $450 for an initial autism assessment after Y.Z. had proceeded unilaterally before IRC could complete the assessment.

On both of the contract claims, the court determined Y.Z. had not proven her case. The court gave judgment in favor of IRC.

III

ANALYSIS

A. The Writ Petition

The threshold question on the writ petition is whether Y.Z. can file an appeal in propria persona on behalf of M.Z. We review this legal issue de novo.

(*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791,799.)

As the recipient of services from the IRC, M.Z. has a "beneficial interest" in the writ petition. (Code Civ. Proc., §§ 1086, 1094.5.) Y.Z. cannot assert any independent enforceable parental rights as identified in *Winkelman v. Parma City School District* (2007) 550 U.S. 516. But Y.Z. does have standing to act on behalf of M.Z. as her authorized representative. As the court explained in *Bodinson Mfg. Co. v. California E. Com.* (1941) 17 Cal.2d 321,330:

> "We are aware of no authority which holds that a person permitted by statute to participate as an interested party in the administrative hearings and to take appeals at the administrative level is, nevertheless, without a sufficient interest in the result to test the legality of the final decision before a court of law. Indeed, it seems to us that elemental principals of justice require that parties to the administrative proceeding be permitted to retain their status as such throughout the final judicial review by a court of law, for the fundamental issues in litigation remain essentially the same."

Nevertheless, because Y.Z. is not a lawyer, she cannot represent M.Z. in court except through a lawyer. Even if Y.Z. was the guardian ad litem for M.Z., she could not represent her. (*J.W. v. Superior Court* (1993) 17 Cal. App.4th 958, 969; *Mossanen v. Monfared* (2000) 77 Cal. App.4th 1402, 1409.) Only an active member of the State Bar can practice law: "Since the passage of the State Bar Act in 1927, persons may represent their own interests in legal proceedings, but may not represent the interests of

another unless they are active members of the state Bar. (*Drake v. Superior Court* (1994) 21 Cal.App.4th 1826, 1830.)" (*Hansen v. Hansen* (2003) 114 Cal.App. 4th 618, 621; Bus. & Prof. Code, § 6125.) Because Y.Z. cannot represent M.Z. on appeal, we dismiss the appeal of the judgment denying the writ petition.

B. Breach of Contract

Y.Z.'s claims for breach of contract seek reimbursement for $49.87 for the cost of diapers and $450 for an initial autism assessment. Based on testimony and written evidence, the court found neither claim had been established.

Our review presumes a judgment is correct. (*Winograd v. American Broadcasting Company* (1998) 68 Cal.App.4th 624, 631-632.) We apply the substantial evidence standard of review to an appeal of a judgment after trial. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874.) Appellant has the burden to demonstrate prejudicial error based on an adequate record and appropriate legal argument. (Code Civ. Proc., § 475; *People v. Stanley* (1995)10 Cal. 4th 764,793; *Pool v. City of Oakland* (1986)42 Cal.3d 1051, 1069; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295.)

Y.Z. has not met her burden to show the trial court erred in denying her claims for breach of contract. As the court noted, Y.Z. could obtain reimbursement for the diaper expense if she executed the correct forms, which she refused to do. Y.Z. was not entitled to reimbursement for the autism assessment because she acted prematurely before the IRC could have the assessment completed. Substantial evidence supports the factual findings of the trial court.

C. Motion to Strike

The last issue concerns whether the court abused its discretion by granting IRC's motion to strike punitive damages and not allowing Y.Z. to amend the combined writ petition and complaint. Because we have dismissed the appeal as it relates to the writ petition, we will consider the issue only as it pertains to the complaint. Punitive damages are not recoverable in an action for breach of contract. (Civ. Code, §3294, subd.(a).) Because Y.Z. did not-and cannot-overcome the law's prohibition on punitive damages for breach of contract, it was not an abuse of discretion to grant the motion to strike or to deny her leave to amend. (Code Civ. Proc., § 473, subd. (a)(1).)

IV

DISPOSITION

We dismiss the appeal of the judgment denying the writ petition and affirm the judgment denying the complaint for breach of contract. The parties are ordered to bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

s/Richli
J.

We concur:

s/McKinster
Acting P.J.

s/Miller
J.

Court of Appeal, Fourth Appellate District,
Division Two - No. E049230

S187292

[FILED NOVEMBER 17, 2010]

IN THE SUPREME COURT OF CALIFORNIA

En Banc

M.Z., a Minor, etc. et al., Plaintiffs and Appellants,

v.

INLAND COUNTIES REGIONAL CENTER INC.,
Defendant and Respondent.

The petition for review is denied.

GEORGE

Chief Justice

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[Key Quotations and Conclusion Excerpted from Appellant's Opening Brief]

[22]

* * * * *

> The purpose of these clear and precise words [of the Fourth Amendment] was to guarantee to the people of this Nation that they should forever be secure from the general searches and unrestrained seizures that had been a hated hallmark of colonial rule under the notorious writs of assistance of the British Crown.

Stanley v. Georgia 394 U.S. 557, 569 (1969) (STEWART, J., concurring)

* * * * *

[27]

* * * * *

> The due process of law clause in the Fourteenth Amendment requires that "state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and not infrequently are designated as 'law of the land.' Those principles are applicable alike in all the states, and do not depend upon or vary with local legislation.

Hebert v. Louisiana, 272 U. S. 312, 316-317 (1926) See also *Castillo v. McConnico,* 168 U.S. 674, 682-683 (1898) *West v. Louisiana,* 194 U. S. 258, 261, 263 (1904); *Patterson v. Colorado,* 205 U. S. 454, 459

(1907); *Pullman Co. v. Knott*, 235 U. S. 23, 25 (1914); *Enterprise Irrigation District v. Farmers' Mutual Canal Co.*, 243 U. S. 157, 166 (1917).

* * * * *

[33]

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There are certain decisions so personal that their protection is "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319, 325 (1937); *Griswold v. Connecticut* 381 U.S.479, 500 (1965) (Harlan, J., concurring.) "[P]rinciple of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Massachusetts*, 291 U. S. 97, 105 (1934); *Brown v. Mississippi*, 297 U. S. 278, 285 (1936) *Hebert v. Louisiana*, 272 U. S. 312, 316 (1926)

[34] "This Court has long recognized that freedom of personal choice in matters of ... family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Cleveland Board of Education v. LaFleur*, 414 U. S. 632, 639-640 (1974).

* * * * * *

[40]

* * * * * *

CONCLUSION

The fourteenth amendment and the fourth amendment as made applicable to the states by the fourteenth amendment prohibit IRC from retaliation against parent for exercise of her constitutional rights.

The judgment of the low court for Inland Regional Center should be reversed.